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CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1943. No. 365

METROPOLITAN LIFE INSURANCE COMPANY,
Petitioner,

vs.

ADRIAN ETTELSON, *et al.*,
Respondents.

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF.

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Supreme Court of the United States

METROPOLITAN LIFE INSURANCE COMPANY, Petitioner, *vs.* ADRIAN ETTELSON, *et al.*, Respondents.	Petition for Certiorari.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

The petition of Metropolitan Life Insurance Company respectfully shows unto your Honors:

A.

Summary Statement of the Matter Involved.

Respondents sued at law in the New Jersey Supreme Court to recover the proceeds of certain policies of insurance. Petitioner removed the case to the Federal Court for the District of New Jersey. Upon the transcript being filed, respondents demanded a jury trial. Thereafter petitioner filed its answer and included therein a counterclaim (Civil Rule of Procedure No. 13 (a)), seeking the equitable affirmative relief of rescission and cancellation of the policies

(R. page 28a). The counterclaim alleged that the insured had made material statements false in fact with respect to his health and medical attendance (R. pages 30a to 33a). There was no allegation that the statements were knowingly and intentionally made.

Respondents moved to strike this counterclaim on the ground of (a) adequate remedy at law and (b) failure to state a claim upon which equitable relief can or should be granted by a Federal Court (R. page 50a).

The District Court denied the motion, 42 Fed. Supp. 488, and the respondents appealed to the Circuit Court of Appeals for the Third Circuit. The petitioner moved the Circuit Court of Appeals to dismiss the appeal on the ground that the order denying the motion to strike was not an appealable order (R. page 65). The Circuit Court of Appeals certified that question to this Court (R. pages 66-68). This Court held that the order was appealable (R. page 69). 317 U. S. 188. Upon the argument of the appeal before the Circuit Court of Appeals, that Court reversed the District Court (R. page 76).

B.

Basis of Jurisdiction.

The statute under which jurisdiction is conferred is Section 240 of Judicial Code as amended by the Act of February 13, 1925, (C. 229, 43 Stat. 936, 938, 939; U. S. C. A. Title 28, Section 347).

C.

Reasons Relied Upon for Allowance of Writ.

a. The Circuit Court of Appeals held that *Erie Railroad Co.* v. *Tompkins,* 304 U. S. 64, does not apply; that the ruling in that case has no bearing on the enforcement of the petitioner's equitable rights of cancellation and rescission under local law as disclosed by its counterclaim, and that the enforcement of these rights under the State law is not a matter of substantive law.

b. The Circuit Court of Appeals denied the petitioner the substantive right under Federal law and procedure to have its equitable claim for cancellation and rescission determined in a proceeding in equity.

c. The Circuit Court of Appeals in effect held that the enforcement of the petitioner's right to the affirmative equitable relief of cancellation and rescission for innocent misrepresentations under the rules of Federal procedure is not the subject of a hearing by the Court sitting in equity, but that whatever relief is granted must be through the medium of a trial by court and jury.

d. The Court reversed the District Court and ordered the case remanded for trial on the counterclaim by the court and jury.

In so holding the Court:

(a) Decided an important question of local law in a way probably in conflict with applicable local decisions.

(b) Decided a Federal question of substance in a way probably not in accord with applicable decisions of this court.

(c) Has so far sanctioned a form of procedure by the lower court constituting such a departure from the accepted and usual course of judicial proceedings as to require the settlement of the procedure by this Court for the guidance of the lower courts and of litigants therein and their counsel.

WHEREFORE your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the United States Circuit Court of Appeals for the Third Circuit, commanding that Court to certify and send to this Court for its review and determination on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket No. 7933, *Adrian Ettelson, et al.,* plaintiffs-appellants v. *Metropolitan Life Insurance Company,* defendant-appellee and that the judgment of the United States Circuit Court of Appeals for the Third Circuit may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just.

And your petitioner will every pray.

METROPOLITAN LIFE INSURANCE COMPANY,

By CONOVER ENGLISH,
Counsel for Petitioner.